

AMENDED IN SENATE APRIL 18, 2012

SENATE BILL

No. 1280

Introduced by Senator Pavley

February 23, 2012

An act to ~~amend~~ *add and repeal* Sections ~~10507.7 and 20651.7~~ *10507.8 and 20651.7* of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1280, as amended, Pavley. Public contracts: University of California and community college districts: competitive bidding: best value.

Existing law requires the Regents of the University of California, except as provided, to let all contracts involving an expenditure of more than \$100,000 annually for goods and materials or services to the lowest responsible bidder meeting certain specifications, or to reject all bids. Existing law requires the governing board of any community college district to let specified contracts involving an expenditure of more than \$50,000 to the lowest responsible bidder meeting certain specifications, or else to reject all bids.

This bill would provide that *before January 1, 2018, the* bid evaluation and selection for these contracts ~~may include competitive means for obtaining best value while complying with the legislative intent of the above requirements~~ *be determined by the best value for the University of California or community college district, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 10507.8 is added to the Public Contract*
2 *Code, to read:*

3 10507.8. (a) *As provided for in this article, when the University*
4 *of California determines that it can expect long-term savings*
5 *through the use of life-cycle cost methodology, the use of more*
6 *sustainable goods and materials, and reduced administrative costs,*
7 *the lowest responsible bidder may be selected on the basis of the*
8 *best value to the university. In order to implement this method of*
9 *selection, the Regents of the University of California shall adopt*
10 *and publish policies and guidelines for evaluating bidders that*
11 *ensure that best value selections by the university are conducted*
12 *in a fair and impartial manner. These policies and guidelines shall*
13 *conform to the requirements of subdivisions (c) and (d) and shall*
14 *be applicable to the university when using best value as the bid*
15 *evaluation methodology.*

16 (b) *For the purposes of this section, the following definitions*
17 *apply:*

18 (1) *“Best value” means the most advantageous balance of price,*
19 *quality, service, performance, and other elements, as defined by*
20 *the university, achieved through methods in accordance with this*
21 *section.*

22 (2) *“Best value agreement” means an agreement entered into*
23 *pursuant to the provisions of this section.*

24 (3) *“Best value awardee” means the lowest responsible bidder*
25 *or bidders who are awarded an agreement for goods, materials,*
26 *or services that was awarded through the use of best value for the*
27 *bid evaluation methodology.*

28 (4) *“University” means all campuses of the University of*
29 *California, including the medical centers, the national laboratories,*
30 *and any future University of California locations.*

31 (c) (1) *The university shall consider all of the following when*
32 *adopting policies and guidelines pursuant to subdivision (a):*

33 (A) *Price and service proposals that reduce the university’s*
34 *overall operating costs.*

35 (B) *Supply and material standards that support the university’s*
36 *strategic sourcing initiatives.*

37 (C) *A procedure for bid protest and resolution.*

1 (2) *The university shall award a best value agreement as*
2 *follows:*

3 (A) *The university shall evaluate bidders based solely upon the*
4 *criteria set forth in the solicitation documents. Solicitation for bids*
5 *shall describe the criteria that the university will consider in*
6 *evaluating the bidders by overall category and by specific*
7 *attributes.*

8 (B) *The university shall award the agreement to the bidder or*
9 *bidders whose bid or bids are determined by the university to be*
10 *the best value in terms of price, quality, service, and performance,*
11 *and that meet the university's requirements.*

12 (C) *Bid participants that are not awarded a best value*
13 *agreement shall be notified in writing at the end of the agreement*
14 *award process.*

15 (d) *For the purposes of this section, the university may take into*
16 *consideration any of the following factors if awarding a best value*
17 *agreement for goods, materials, and services:*

18 (1) *The total cost to the university of its use or consumption of*
19 *goods, materials, and services.*

20 (2) *The operational cost or benefit incurred by the university*
21 *as a result of a contract award.*

22 (3) *The added value to the university, as defined in the request*
23 *for proposal, of vendor-added services.*

24 (4) *The quality and effectiveness of goods, materials, and*
25 *services.*

26 (5) *The use of more sustainable goods and materials in the*
27 *manufacturing of the goods and materials and the packaging of*
28 *these products.*

29 (6) *The reliability and timeliness of delivery and installation.*

30 (7) *The terms and conditions of product warranties,*
31 *maintenance, and vendor guarantees.*

32 (8) *The vendor's quality assurance, continuous improvement,*
33 *and business resumption programs and their benefit to the*
34 *university.*

35 (9) *The vendor's experience with the timely provision of goods,*
36 *materials, and services.*

37 (10) *The consistency of quality and availability of the vendor's*
38 *proposed supplies, materials, and services with the university's*
39 *overall procurement program.*

1 (11) *The economic benefits to the local community, including,*
2 *but not limited to, job creation or retention and the support of*
3 *small and local businesses.*

4 (e) *The university shall ensure that all businesses have a fair*
5 *and equitable opportunity to compete for, and participate in, the*
6 *university best value bids and shall also ensure that discrimination*
7 *in the award and performance of the agreement does not occur*
8 *on the basis of gender, marital status, ancestry, medical condition,*
9 *or any characteristic listed or defined in Section 11135 of the*
10 *Government Code, or retaliation for having filed a discrimination*
11 *complaint or protest in the performance of university contractual*
12 *obligations.*

13 (f) (1) *On or before July 1, 2016, the University of California*
14 *shall collect and provide the following information to the*
15 *Legislative Analyst's Office:*

16 (A) *The total number of contracts awarded by the University of*
17 *California involving an expenditure of more than one hundred*
18 *thousand dollars (\$100,000) annually for goods and materials to*
19 *the lowest responsible bidder and the number of contracts awarded*
20 *using best value.*

21 (B) *A description of the products, commodities, or services*
22 *resulting from the best value agreements awarded pursuant to this*
23 *section.*

24 (C) *The name of the best value awardee or awardees of the*
25 *agreement or agreements.*

26 (D) *The criteria used to evaluate the bids.*

27 (E) *The actual volume resulting from the agreements, or*
28 *estimated volume if the best value agreements are less than one*
29 *year old, of all purchases.*

30 (F) *A summary of the rationale for the awarding of the best*
31 *value agreement.*

32 (G) *A description of any written bid protest or protests*
33 *concerning an aspect of the solicitation, bid, or award of the best*
34 *value agreement including the resolution of the protest.*

35 (H) *The policies and procedures adopted pursuant to subdivision*
36 *(a).*

37 (I) *A summary of any noncost value obtained through best value*
38 *agreements.*

39 (2) *The Legislative Analyst shall request the University of*
40 *California to provide the information specified in paragraph (1)*

1 to the Legislative Analyst on or before November 1, 2016. On or
2 before February 1, 2017, the Legislative Analyst shall report to
3 the Legislature on the use of best value procurement by the
4 University of California. The Legislative Analyst shall use the
5 information provided by the university to report all of the
6 following:

7 (A) A summary of the overall benefits of best value acquisition.

8 (B) A summary of any disputes arising from the use of best value
9 procurement practices and the resolution and status of those
10 disputes.

11 (C) A summary of overall performance criteria used to evaluate
12 the bids and the effectiveness of the methodology.

13 (D) A summary of noncost value reported by the university.

14 (E) A general summary and evaluation of university policies
15 adopted pursuant to subdivision (a).

16 (F) Recommendations as to whether the best value at lowest
17 cost acquisition procurement authority should be continued.

18 (g) This section applies solely to the procurement of goods,
19 materials, or services and shall not apply to construction contracts.

20 (h) This section shall remain in effect only until January 1, 2018,
21 and as of that date is repealed.

22 SEC. 2. Section 20651.7 is added to the Public Contract Code,
23 to read:

24 20651.7. (a) For the purposes of bid evaluation and selection
25 pursuant to subdivision (a) of Section 20651, when a community
26 college district determines that it can expect long-term savings
27 through the use of objective performance criteria other than price,
28 the community college district may provide for selection based on
29 competitive means for obtaining best value pursuant to policies
30 and procedures adopted by the governing board in accordance
31 with this section.

32 (b) For purposes of this section “best value” means a value
33 determined by objective performance criteria that may include,
34 but need not be limited to, price, features, long-term functionality,
35 life-cycle costs, overall sustainability, required services to make
36 operational for the community college and other criteria deemed
37 appropriate by the community college district.

38 (c) A community college district shall consider all of the
39 following if adopting best value policies pursuant to subdivision
40 (a):

1 (1) *Price and service level proposals that reduce the district's*
2 *overall operating costs, including end-of-life expenditures and*
3 *impact.*

4 (2) *Equipment, services, supplies, and materials standards that*
5 *support the community college district's strategic acquisition and*
6 *management program direction.*

7 (3) *A procedure for protest and resolution.*

8 (d) *A community college district may consider any of the*
9 *following factors if adopting policies and procedures pursuant to*
10 *subdivision (c):*

11 (1) *The total cost to the community college district of its*
12 *purchase, use, and consumption of equipment, supplies, and*
13 *materials.*

14 (2) *The operational cost or benefit incurred by the community*
15 *college district as a result of a contract award.*

16 (3) *The added value to the community college district, as defined*
17 *in the request for proposal, of vendor-added services.*

18 (4) *The quality and effectiveness of equipment, supplies,*
19 *materials, and services.*

20 (5) *The reliability of delivery and installation schedules.*

21 (6) *The terms and conditions of product warranties and vendor*
22 *guarantees.*

23 (7) *The financial stability of the vendor.*

24 (8) *The vendor's quality assurance program.*

25 (9) *The vendor's experience with the provisions of equipment,*
26 *supplies, materials, and services within the institutional*
27 *marketplace.*

28 (10) *The consistency of the vendor's proposed equipment,*
29 *supplies, materials, and services with the district's overall supplies*
30 *and materials procurement program.*

31 (11) *The economic benefits to the local community, including,*
32 *but not limited to, job creation and retention.*

33 (12) *The environmental benefits to the local community.*

34 (e) *A community college district shall award a contract to the*
35 *responsible bidder whose proposal is determined, in writing by*
36 *the community college district, to be the best value to the*
37 *community college district based solely on the criteria set forth in*
38 *the request for proposal.*

39 (f) *The governing board of a community college district shall*
40 *issue a written notice of intent to award supporting its contract*

1 *award and stating in detail the basis of the award. The notice of*
2 *the intent to award and the contract file must be sufficient to satisfy*
3 *an external audit.*

4 *(g) The governing board of a community college district shall*
5 *publicly announce its award, identifying the bidder to whom the*
6 *award is made, the price proposal of the contractor awarded the*
7 *contract, and the overall combined rating on the request for*
8 *proposal evaluation factors. The announcement shall also include*
9 *the ranking of the contractor awarded the contract in relation to*
10 *all other responsive bidders and their respective price proposals*
11 *and summary of the rationale for the contract award.*

12 *(h) The community college district shall ensure that all*
13 *businesses have a fair and equitable opportunity to compete for,*
14 *and participate in, district contracts and shall also ensure that*
15 *discrimination, as described in subdivision (e) of Section 12751.3*
16 *of the Public Utilities Code, in the award and performance of*
17 *contracts does not occur.*

18 *(i) (1) If a community college district elects to purchase*
19 *equipment, materials, supplies, and services by contract, let in*
20 *accordance with this section, the community college district shall*
21 *submit the following information to the Chancellor of the*
22 *California Community Colleges on or before January 1, 2016:*

23 *(A) The total number of district procurements for contracts and*
24 *the number that were done under best value acquisition policies.*

25 *(B) For a contract awarded under the best value acquisition*
26 *policies, the bid announcement announcing the bidder to whom*
27 *the award was made, including that bidder's scoring rating*
28 *compared to other bidders, the winning contractor's price*
29 *proposal, the overall combined rating on the request for proposal*
30 *evaluation factors, and a summary of the rationale for the contract*
31 *award.*

32 *(C) The bid award announcement specifying to whom the*
33 *contract was awarded, and the amount of the award for any*
34 *comparably sized contract, to the best value contract being let,*
35 *awarded pursuant to the traditional lowest responsible bidder*
36 *process in the three years prior to the adoption of best value*
37 *acquisition policies.*

38 *(D) The nature of any disputes arising from the use of best value*
39 *procurement practices and the status of those disputes.*

1 (E) *The community college district's policies adopted pursuant*
2 *to subdivision (a).*

3 (F) *A summary of any additional economic benefit other than*
4 *the price of the contract obtained through contracts let under the*
5 *best value acquisition policies.*

6 (2) *The Legislative Analyst shall request the chancellor to*
7 *provide the information specified in paragraph (1) to the*
8 *Legislative Analyst on or before July 1, 2016. On or before January*
9 *1, 2017, the Legislative Analyst shall report to the Legislature on*
10 *the use of competitive means for obtaining best value procurement*
11 *by community college districts. The Legislative Analyst shall use*
12 *the information provided by the chancellor to report all of the*
13 *following:*

14 (A) *A summary of the overall benefits of best value acquisition.*

15 (B) *A comparison of the overall cost of best value acquisition*
16 *to similar contracts let under traditional low bid procurement*
17 *practices.*

18 (C) *A summary of any disputes arising from the use of best value*
19 *procurement practices and the resolution and status of those*
20 *disputes.*

21 (D) *A summary of overall performance criteria used to evaluate*
22 *the bids and the effectiveness of the methodology.*

23 (E) *A summary of soft cost value reported by the community*
24 *college district.*

25 (F) *A general summary and evaluation of the community college*
26 *district's policies adopted pursuant to subdivision (a).*

27 (G) *Recommendations as to whether the best value at lowest*
28 *cost acquisition procurement authority should be continued.*

29 (j) *This section shall remain in effect only until January 1, 2018,*
30 *and as of that date is repealed.*

31 ~~SECTION 1. Section 10507.7 of the Public Contract Code is~~
32 ~~amended to read:~~

33 ~~10507.7. (a) Except as provided for in this article, the Regents~~
34 ~~of the University of California shall let all contracts involving an~~
35 ~~expenditure of more than one hundred thousand dollars (\$100,000)~~
36 ~~annually for goods and materials to be sold to the University of~~
37 ~~California to the lowest responsible bidder meeting specifications;~~
38 ~~or else reject all bids. Contracts for services to be performed, other~~
39 ~~than personal or professional services, involving an expenditure~~
40 ~~of one hundred thousand dollars (\$100,000) or more annually shall~~

1 be made or entered into with the lowest responsible bidder meeting
2 specifications, or else all bids shall be rejected. If the regents deem
3 it to be for the best interest of the university, the regents may, on
4 the refusal or failure of the successful bidder for materials, goods,
5 or services to execute a tendered contract, award it to the second
6 lowest responsible bidder meeting specifications. If the second
7 lowest responsible bidder fails or refuses to execute the contract,
8 the regents may likewise award it to the third lowest responsible
9 bidder meeting specifications.

10 (b) For the purposes of this section, bid evaluation and selection
11 may include competitive means for obtaining best value while
12 complying with the legislative intent of subdivision (a).

13 SEC. 2. Section 20651 of the Public Contract Code is amended
14 to read:

15 20651. (a) (1) The governing board of any community college
16 district shall let any contracts involving an expenditure of more
17 than fifty thousand dollars (\$50,000) for any of the following:

18 (A) The purchase of equipment, materials, or supplies to be
19 furnished, sold, or leased to the district.

20 (B) Services, except construction services.

21 (C) Repairs, including maintenance as defined in Section 20656,
22 that are not a public project as defined in subdivision (c) of Section
23 22002.

24 (2) The contract shall be let to the lowest responsible bidder
25 who shall give security as the board requires, or else reject all bids.

26 (3) For the purposes of this subdivision, bid evaluation and
27 selection may include competitive means for obtaining best value
28 while complying with the legislative intent of paragraphs (1) and
29 (2).

30 (b) The governing board shall let any contract for a public
31 project, as defined in subdivision (c) of Section 22002, involving
32 an expenditure of fifteen thousand dollars (\$15,000) or more to
33 the lowest responsible bidder who shall give security as the board
34 requires, or else reject all bids. All bids for construction work shall
35 be presented under sealed cover and shall be accompanied by one
36 of the following forms of bidder's security:

37 (1) Cash.

38 (2) A cashier's check made payable to the community college
39 district.

1 ~~(3) A certified check made payable to the community college~~
2 ~~district.~~

3 ~~(4) A bidder's bond executed by an admitted surety insurer,~~
4 ~~made payable to the community college district.~~

5 ~~Upon an award to the lowest bidder, the security of an~~
6 ~~unsucessful bidder shall be returned in a reasonable period of~~
7 ~~time, but in no event shall that security be held by the district~~
8 ~~beyond 60 days from the time the award is made.~~

9 ~~(e) This section applies to all equipment, materials, or supplies,~~
10 ~~whether patented or otherwise. This section shall not apply to~~
11 ~~professional services or advice, insurance services, or any other~~
12 ~~purchase or service otherwise exempt from this section, or to any~~
13 ~~works done by day labor or by force account pursuant to Section~~
14 ~~20655.~~

15 ~~(d) Commencing January 1, 1997, the Board of Governors of~~
16 ~~the California Community Colleges shall annually adjust the dollar~~
17 ~~amounts specified in subdivision (a) to reflect the percentage~~
18 ~~change in the annual average value of the Implicit Price Deflator~~
19 ~~for State and Local Government Purchases of Goods and Services~~
20 ~~for the United States, as published by the United States Department~~
21 ~~of Commerce for the 12-month period ending in the prior fiscal~~
22 ~~year. The annual adjustments shall be rounded to the nearest one~~
23 ~~hundred dollars (\$100).~~